IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1511 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHANAJI MOTAJI PURABIA & 1 - Appellant(s)
Versus
TRANSPORT MANAGER A.M.T.S. & 2 - Defendant(s)

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Appearance :

MR BHARAT B SHAH for Appellant(s) : 1,DELETED for Appellant(s) : 2,
NOTICE SERVED for Defendant(s) : 1 - 3.
MR HS MUNSHAW for Defendant(s) : 1,
MS AVANI S MEHTA for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 20/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

This appeal has been filed by the original claimants seeking enhancement of compensation awarded in their favour by the Motor Accident Claims Tribunal (Aux.), Ahmedabad in Claim Petition No.1153 of 1998.

2. Facts as emerging from the record are that son of the claimants one Mahendra Bhanaji was travelling in a side-car attached to a scooter on 18th March, 1998. At about 9.30 p.m. the scooter in which the son of the claimants was travelling dashed against an AMTS bus. Two persons sitting on the scooter as well as son of the claimants sitting in the side-car received bodily injuries. Son of the claimants succumbed to the injuries whereas other two passengers received bodily injuries. The appellants herein, therefore, filed the above-mentioned Claim Petition No.1153/98 seeking compensation of Rs.4 lacs from the opponents i.e. AMTS as well as the Insurance Company which had insured the scooter involved in the accident.

3. The Claims Tribunal in its judgment and award came to the conclusion that the accident was caused on account of the negligent driving of both the AMTS bus as well as the scooter. In so far as the appellants herein are concerned, the Tribunal found that there was composite negligence on the part

of the scooter driver as well as the driver of the bus which resulted in the death of the son of the appellants.

With respect to the quantum of compensation, the Tribunal did not accept the say of the claimants that the deceased was employed as an Accountant and was drawing salary of Rs.3,000/- to Rs.4,000/- per month and that he was also doing other odd jobs such as selling milk and earning additional income. Though the claimants had examined one Anilbhai Shankarlal Thada who had stated before the Tribunal in his oral evidence that the deceased was employed as an Accounts Clerk and was drawing a salary of Rs.3,500/- per month, the Tribunal discarded the said evidence on the ground that no supporting document was produced. The Tribunal also did not accept the version of claimant No.1, father of the deceased, with respect to his income which included his employment as an Accountant and other sundry source of income. The Tribunal found that in absence of any evidence regarding income of the deceased, it would be appropriate to take notional income of Rs.15000/- per annum. Considering the future prospects, the Tribunal found that the average prospective income of the deceased should be considered at Rs.22,500/- per year. Considering that the parents were the sole claimants, the Tribunal found it appropriate to deduct two-third of the said amount towards personal expenditure of the deceased and awarded only one-third as the dependency benefits of the claimants.

The Tribunal then adopted multiplier of 17 and arrived at the figure of Rs.1,27,500/- towards loss of dependency benefits for the claimants. With the said sum, the Tribunal added Rs.20,000/- for loss of expectation of life and Rs.2,000/- for funeral expenses. In all, the Tribunal awarded Rs.1,49,500/- to the claimants.

4. Before us, learned advocate Shri Bharat Shah for the appellants submitted that the Tribunal erred in awarding a sum as low as Rs.1,49,500/- for the death of an educated, able bodied person who was aged 21 years on the date of the accident. He pointed out that the father of the deceased was earlier employed in a Mill Company and had lost his job on account of retrenchment. He submitted that thus the parents relied solely on the earnings of their son who was residing with them.

It was further contended that there was evidence on record to suggest that the deceased was an educated person and was employed as an Accounts Clerk. He, therefore, submitted that an income of Rs.3,000/- to Rs.3500/- per month could have been easily believed by the Claims Tribunal. Considering the future prospects of increase in the salary, he submitted that the award passed by the Claims Tribunal is required to be enhanced.

5. On the other hand, on behalf of the AMTS, learned counsel supported the award under challenge.

6. Having heard the learned advocates appearing for the parties we find that so far as the factum of death of the deceased on account of the motor accident, nature of accident and on the question of negligence of the drivers in causing the accident, there is no dispute raised. It may be noted that neither the Insurance Company which had insured the scooter nor the AMTS has preferred appeal against the judgment and award passed by the Claims Tribunal. In that view of the matter, it would not be necessary to discuss the reasoning adopted by the Claims Tribunal to arrive at such a conclusion. The sole question that calls for consideration in this appeal is with respect to the quantum of compensation awarded by the Claims Tribunal.

7. As noted earlier, the Claims Tribunal awarded a total sum of Rs.1,49,500/- to the claimants who are parents of the deceased who died in the motor vehicle accident. We find that not only in the Claim Petition but in his oral deposition also, father of the deceased had stated before the Claims Tribunal that the deceased was employed as a Clerk in one Ganpati Infrastructure and the said Company was paying him salary of Rs.3,000/- per month. It was stated that the job hours of the deceased were from 11.00 a.m. to 5.00 in the evening. In addition to the said income, the deceased was also doing other miscellaneous work, such as, selling fire crackers and kites during festival seasons and

was also selling milk and earning additional income of Rs.500/- per month. Thus, according to the claimants, the deceased was earning Rs.3,000/- to Rs.4,000/- per month. In addition to the deposition of the father of the deceased, the claimants also examined one Anilbhai Shankarlal Thada at Ex.51 to establish that the deceased was engaged as an Accounts Clerk. The said witness stated before the Claims Tribunal that the deceased was working in Ganpati Infrastructure Limited as an Accountant since March 1997 and he was drawing initial salary of Rs.3,000/- per month and with effect from January 1998 with release of increment, his salary was Rs.3,500/- per month. He also sought to produce a voucher to evidence such salary being released in favour of the deceased. Despite the above evidence on record, the Tribunal found that there was no reliable evidence as regards income of the deceased. The Tribunal, therefore, discarded all assertions of the claimants and adopted notional income of the deceased at Rs.15,000/- per annum.

8. We find that there was evidence on record to suggest that the deceased was engaged as Accounts Clerk. It is not the case of the opponents that the deceased was illiterate. It may be true that the claimants were not fully successful in establishing the exact salary of the deceased on the date of the accident. It would, however, not be correct to state that there was no evidence on record to suggest that the deceased was employed as Accounts Clerk.

In that view of the matter, it would be proper to assess the monthly income of the deceased at Rs.3,000/-. With passage of time and with inflation and diminishing value of rupee, there would be at least some increase in the salary. It would, therefore, not be improper to accept the prospective average income of the deceased at the rate of Rs.4500/- per month. Considering the fact that the claimants were parents, it would not be proper to adopt the normal rule of deducting only one-third for the personal expenditure of the deceased himself leaving two-third of the earnings for the benefit of the family. However, considering that there was evidence on record to suggest that the father of the deceased had been rendered jobless on account of closure of the Mill Company, in the facts of the case, we find it appropriate that half of the income of the deceased though can be reduced for his personal expenditure and for the expenditure of the family which he might have nurtured in future, another half of the income can be diverted for the benefit of the parents who relied on his income for their survival. Considering this aspect of the matter, an amount of Rs.2250/- per month can be assessed as the loss of dependency benefits i.e. Rs.27,000/- per year.

9. We find that the Tribunal erred in adopting the multiplier as high as 17 considering the respective ages of the claimants. On the date of the accident, claimant No.1 was stated to be aged 47

years and claimant No.2 was aged 43 years. We find that in the Second Schedule to the Motor Vehicles Act, multiplier to be adopted in case of a person aged above 45 years but less than 50 years is 13 whereas for a person in the age of group of 40 to 45 years, multiplier of 15 can be considered. We are conscious of the fact that the said schedule is meant for the structured formula to be applied in case of claim petition filed under section 163-A of the Motor Vehicles Act. However, multiplier contained therein is being used as a proper guideline to be applied in the present case. We find that the mother of the deceased who was aged 43 years on the date of filing of the claim petition has died during the pendency of the claim petition. We, therefore, apply the multiplier of 13 which is relatable to the age of the father of the deceased. The claimant, therefore, would be entitled to receive a sum of Rs.3,51,000/- (Rs.27,000 x 13) towards loss of dependency benefits. To the said sum, we would be adding Rs.25,000/- for loss of expectation of life and Rs.5,000/- for funeral expenses.

10. In the result, we find that it would be appropriate to award compensation of Rs.3,81,000/- to the claimants and we order accordingly.

11. The appeal is, therefore, partially allowed with proportionate costs. The award passed by the Claims Tribunal is ordered to be modified accordingly. We find that the Claims Tribunal had

awarded interest at the rate of 9 per cent per annum from the date of claim petition till realisation. For the additional amount awarded as per this judgment also, the same interest will be paid. The appeal is disposed of in above terms.

12. Out of the additional amount awarded by us under this judgment with proportionate costs and interest, the Claims Tribunal shall invest 80 per cent in fixed deposit with a nationalised bank near the residence of the claimant for a period of five years with usual conditions about prohibition against premature encashment of/encumbrance over the deposits, permission to the claimant to withdraw interest periodically accruing on the fixed deposit and a direction to the bank not to permit the bank account of the claimant to be operated by any power of attorney holder other than a close relative of the claimant. Th remaining amount shall be disbursed to the claimants by account payee cheques after proper verification and after informing the claimant about the amounts being invested and disbursed and the terms and conditions of investment.

(M.S.Shah, J.)

(Akil Kureshi, J.)

(vjn)